

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 55

Docket No. MC2013-40

Competitive Product Prices  
Priority Mail Contract 55 (MC2013-40)  
Negotiated Service Agreement

Docket No. CP2013-52

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
PRIORITY MAIL CONTRACT 55  
TO COMPETITIVE PRODUCT LIST

(February 28, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1665.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 55 to the competitive product list.<sup>2</sup> The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governors' Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

According to the Postal Service, Priority Mail Contract 55 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1.

---

<sup>1</sup> Notice and Order Concerning the Addition of Priority Mail Contract 55 to the Competitive Product List, February 22, 2013 (Order No.1665).

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Contract 55 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 21, 2013 (Request).

The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.<sup>3</sup>

## COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, as well as the financial data and the model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Contract 55 should be categorized as a competitive product and added to the competitive product list. In addition, based on the financial workpapers filed by the Postal Service, it appears that the contract in its first year should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 55 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Contract 55 to the competitive product list is appropriate.

---

<sup>3</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Request, it appears that the negotiated prices in the instant contract should generate sufficient revenues to cover costs during its first year. Although, the Public Representative finds that the contract is expected to meet the requirements of 39 U.S.C. 3633(a) during the first year, the Public Representative expresses the *concerns* described below.

First, the contract contains several terms that affect prices and adjust them quarterly. Request, Attachment B. Price adjustments are made in connection with the changes of Priority Mail Commercial Plus prices and/or changes in Customer's volumes of shipped Contract Packages. Id. However, the contract does not provide clear information on price adjustment for the Second and Third quarters of the First Year. The Commission has already requested the Postal Service to provide supplemental information to clarify the record. Notice at 3, Supplemental information, Question 1 and Question 3.

Second, the Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) in subsequent years. The Public Representative is mindful that the Postal Service will file cost, revenue and volume data in each year's Annual Compliance Report. That will aid the Commission in ensuring that the Priority Mail Contract 55 continues to comply with the requirements of 39 U.S.C. § 3633(a).

Also, section VI (Amendments) of the initial contract contains either a typo or missing words that make the Amendments section of the contract unclear. As requested by the Commission, the Postal Service should provide clarification for the terms of Amendments. Notice at 3, Supplemental information, Question 2. The Commission

should insure that the Postal Service clarifies all the questions raised in the referenced Notice, and provides Errata of the contract for the Commission's review.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

---

Lyudmila Y. Bzhilyanskaya  
Public Representative

901 New York Ave. NW  
Washington, DC 20268-0001  
202-789-6849  
lyudmila.bzhilyanskaya@prc.gov